STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY OF ILLINOIS	)	
	)	
Petition for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Public Utilities Act, to Construct, Operate and Maintain a New High Voltage Electric Service Line and Related Facilities in the Counties of Adams, Brown, Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon, Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler, Scott and Shelby, Illinois.	)	Docket No. 12-0598

REPLY IN SUPPORT OF MOTION TO STRIKE PORTIONS OF CERTAIN INTERVENORS' DIRECT TESTIMONY

On April 17, 2013, Ameren Transmission Company of Illinois ("ATXI") filed a Motion to Strike Portions of Certain Intervenors' Direct Testimony and for an Expedited Ruling. In response to ATXI's motion, a number of witnesses filed responses, including several who have withdrawn, refiled, or clarified portions of their testimony. Based on these actions, ATXI will withdraw its motion to strike with respect to certain portions of testimony. ATXI will describe the issues that have been resolved first, and then offer its reply in support of striking the remaining challenged testimony.

I. RESOLVED ISSUES

The following witnesses have withdrawn certain challenged portions of their testimony, as set forth below:

- Barbara File, p. 2:85–91
- Stuart Kaiser, p. 3 (last question and answer) and p. 4 (first question and answer)
- David Lewis, p. 3:74–81
- Melvin Loos, p. 3:87–4:96
- Brent Mast, p. 4:95–102

With these withdrawals, ATXI will also withdraw its motion to strike with respect to the remaining challenged testimony of these witnesses (with one exception)[1]. ATXI does not necessarily concede that the remaining testimony is proper, but based on the withdrawals it appears that these witnesses are only describing facts about their own property. ATXI reserves the right to object to these witnesses' testimony if it becomes apparent that they are, in fact, attempting to represent the interests or speak on behalf of another person or that person's property.

Also, counsel for ATXI and for the Shelby County Landowners Group have reached an agreement regarding the testimony of Larry Durbin. The Group has filed an Errata amending Mr. Durbin's testimony to remove certain testimony. For this reason, a ruling on ATXI's motion with respect to Mr. Durbin's testimony is unnecessary.

Finally, ATXI withdraws its request to strike Margaret Sue Snedeker's testimony at page 3, lines 39–40 (concerning the Renner Family Cemetery), based on her clarification that the cemetery is "located on her land." (*See* STPL Response at 3.)

II. REPLY TO DONNA ALLEN

ATXI moved to strike portions of the testimony and exhibits of Donna Allen. Among other problems, Ms. Allen's testimony and accompanying exhibits represent inadmissible hearsay. Hearsay is a statement, "other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c).

Ms. Allen's response is to assert that these individuals have "offered to submit their

[1] Mr. Kaiser purported to represent the interests of "the people at the dairy farm." (*See* Kaiser Dir., p. 3.) His attorney neither withdraws nor defends this portion of his testimony. ATXI continues to believe this testimony is improper, and it maintains its motion to strike. For sake of clarity, based on Mr. Kaiser's withdrawals, this is the only portion of his testimony that ATXI moves to strike.

testimony through [Ms. Allen's] petition to intervene." (Allen Response at 1.) This only proves ATXI's point: the proffered statements are hearsay. As the Commission has held, even when hearsay evidence is quoted or otherwise attached to testimony, it remains inherently unreliable and offers no opportunity for cross-examination. *See Aqua Illinois, Inc.*, Docket 04-0442, Final Order, p. 43, n. 4 (Apr. 20, 2005). The offer to submit testimony "through" Ms. Allen does not change the fact that the authors of the letters are not available for cross-examination. Nor does it vest them with a legally cognizable interest in Ms. Allen's property.

Likewise, Exhibits 3 and 4 are letters written to the Commission by Ms. Allen's neighbors, in which these individuals express their opposition to the Project. These letters have been offered to prove that the declarants oppose the Project, and, as such, are offered for the truth of the matters asserted. The declarants have not submitted testimony on their own behalf, or even intervened in this proceeding, and are therefore not available for cross-examination. The statements fulfill each of the elements of hearsay, are not offered under any exception to the hearsay rule, and are therefore inadmissible. Ill. R. Evid. 802.

And this is not the only problem. As Ms. Allen freely acknowledges in her Response, the individuals who drafted the letters do not own land impacted by the Project. Thus, even if the statements were deemed to fall under an exception to the hearsay rule, they must be stricken for the *declarant's* lack of standing. In fact, these individuals' only interest in the proceedings is an intangible, abstract interest in the preservation of property belonging to Ms. Allen. However, standing "requires some injury in fact to a legally recognized interest, and a prospective party cannot gain standing merely through a self-proclaimed concern about an issue, no matter how sincere." *Landmarks Preservation Council v. Chicago*, 125 Ill. 2d 164, 175 (1988). The letter-writers' proclaimed interest in Ms. Allen's property is insufficient to vest them with standing.

Thus, not only does *Ms. Allen* lack standing to present the interests of her neighbors, but the neighbors *themselves* lack standing.

Finally, the letter attached as Exhibit 5 to Ms. Allen's testimony is inadmissible hearsay. Neither the author of that letter nor the Federal Highway Administration ("FHWA") has petitioned to intervene in this proceeding. Nor are they available for cross-examination. Nevertheless, Ms. Allen has offered the letter for the truth of the matters asserted therein, namely that the Interstate 70 corridor is a viable, proper routing option. Ms. Allen's Response makes no attempt to argue that the letter is not hearsay or is otherwise admissible under an exception to the hearsay rule; instead, Ms. Allen reiterates her belief that this option should be considered. But Ms. Allen's convictions regarding the content of the hearsay do not render it admissible. Exhibit 5 and the testimony of Ms. Allen related to that Exhibit must be stricken.

III. REPLY TO THE RAGHEB FAMILY

The Raghebs raise a number of responsive arguments, but none of them support denying ATXI's motion to strike.

A. The motion to strike is not premature.

The Raghebs state that ATXI's motion to strike direct testimony is premature because it was filed before cross-examination could occur. (Ragheb Response at 2.) They cite no authority in favor of this view, and it is contrary to law.

"A motion to strike evidence is timely when the character of the objectionable testimony is apparent or as soon as it becomes apparent." *Cent. Ill. Pub. Serv. Co. v. Gibbel*, 65 Ill.App.3d 890, 893 (1978). Indeed, waiting till direct testimony is concluded to raise a motion to strike may serve as waiver of the objection. In *Stein v. Burns International Sec. Services, Inc.*, the appellate court noted that "during . . . direct testimony," "[n]o objection or motion to strike was made" regarding the challenged testimony. 102 Ill.App.3d 776, 781 (1981). Far from condoning

the delay, the court observed that the movant should have "made an *immediate* objection when the [witness] first commented," and that the "failure to make a timely objection waived any error." *Id*. at 782 (emphasis added).

ATXI further notes that, under the established schedule, pre-filed motions are due May 3, 2013. Thus, ATXI's Motion has actually been submitted sooner than required. In short, ATXI's motion is not premature.

B. The Raghebs' status as landowners does not entitle them to raise the interests of other landowners.

The Raghebs also defend the testimony, stating "Dr. Ragheb is not representing 'the views or positions of other parties or entities' but his position as a landowner and farmer." (Ragheb Response at 3.)

His testimony plainly contradicts this representation. Dr. Ragheb testifies on behalf of the interests of "area farmers and/or landowners" and specifically "identifie[s] 9 farmsteads" and the "properties of Mrs. Nancy N. Madigan and Mr. Michael E. Lockwood." (*See* Ragheb Dir. at 16.) He is not simply representing "his position."

Moreover, just because "Dr. Ragheb is a farmer and a landowner" (Ragheb Response at 3), that does not entitle him to represent *any* farmer or landowner. Little of the doctrine of standing would remain were that the case. "A party must assert its own legal rights and interests, rather than assert a claim for relief based upon the rights of third parties." *Powell v. Dean Foods Co.*, 2012 IL 111714, 965 N.E.2d 404, ¶ 36.

C. The testimony does not simply state facts, but purports to testify as to what would "benefit" other farmers and landowners.

Another response of the Raghebs is that the challenged lines of testimony "are simple statements of fact." (*Id*. at 4.) This is not true. The entire point of the challenged questions is to

explain that "area farmers," "landowners," and "other intervenors" will "*benefit* from" Dr. Ragheb's proposals. (Ragheb Dir. at 16 (emphasis added).)

In other words, Dr. Ragheb is not merely testifying that his proposal avoids certain farms; rather, he purports to testify to what is (and is not) in the best interests of others. Dr. Ragheb makes *value judgments* regarding the Project on behalf of other persons; he does not simply state the facts.

D. The Raghebs' motive for offering Dr. Ragheb's testimony is irrelevant.

The Raghebs also argue that the motion to strike should be denied because "the intent of these lines of testimony was clearly not to represent the personal or property interests of another." (*Id*. at 5.) But the intention behind the testimony is irrelevant, and ATXI does not impute an improper motive to the Raghebs. The problem is that, whatever the family's intentions, Dr. Ragheb is neither legally entitled nor professionally licensed to represent the interests of other farmers and landowners, or to represent what would be to their "benefit," but that is what he does in his testimony.

E. The entire cited portion of the testimony should be struck from the record.

The Raghebs point out that the motion to strike reaches the following portion of a sentence: "the Ragheb Family will not have their ultralight flightpark permanently ruined." (*Id*. at 6.)

Had this testimony occurred in a different context, ATXI likely would not have moved to strike it. The Company does not deny that intervenors may represent their *own* interests and properties. But this clause does not stand on its own. It is buried in the middle of a sentence and paragraph focused on Dr. Ragheb's view of what would benefit other farmers and landowners. (*See* Ragheb Dir. at 16.) And if everything *but* that portion of the sentence were struck, the

affected section of Dr. Ragheb's testimony would become somewhat incoherent, with a random clause floating between two other questions and answers.

Particularly given that Dr. Ragheb references his plans for the ultralight flightpark in several other portions of his direct testimony (*see id*. at 3:44–4:51, 18:371, 18:390–91, & 19:396–97), the challenged portion of the testimony should be struck in its entirety.

F. ATXI is capable of representing its own interests in this proceeding.

Finally, the Raghebs argue that ATXI is "selectively applying its argument because it did not attempt to include lines 295–310 of Ragheb Exhibit 1.0, where potential benefits and detriments of the route to ATXI were highlighted." (Ragheb Response at 6.)

The Raghebs' response here is not an argument so much as an attempt at a rhetorical point: they insinuate that ATXI must be unable to "[d]irectly [d]isprove" whatever it has moved to strike. (*Id*.) This does not strike ATXI as a serious argument. It seems sufficient to note that the concerns presented by testimony on behalf of third parties are not presented when the Raghebs speak regarding ATXI. Unlike the third parties, ATXI is aware of Dr. Ragheb's testimony, can speak for itself, and can correct Dr. Ragheb's representations directly, as needed. A motion to strike is not necessary when ATXI can cure the erroneous statements itself.

IV. REPLY TO MORGAN, SANGAMON, AND SCOTT COUNTIES LAND PRESERVATION GROUP

The Morgan, Sangamon, and Scott Counties Land Preservation Group ("the Group") filed a response regarding ATXI's motion to strike portions of Paul Bergschneider's direct testimony. The Group does not offer any sound basis for denying ATXI's motion to strike.

A. Witnesses must testify on their own behalf.

The predominant theme of the Group's opposition is essentially to question why any of the Group's individual witnesses should have to testify. To be clear, ATXI is not arguing that it

is improper for a group to form, intervene, and call witnesses (such as experts) on the group's behalf. But the group's witness may not represent the interests of other individual members or testify on their individual behalf. So if the individual members of the Group have something to say about the impact of the transmission line, they need to submit their own testimony and do so—a point the Group appears to concede when it offers to make all members of the Group available for cross. (MSSCLPG Response ¶ 5.)

The Group concedes that Mr. Bergschneider "offers testimony as a representative of the group." (*Id*.) The Group's response makes clear that it sees no problem with one witness speaking for many: "If we are to follow the reasoning set forth by ATXI herein, each individual member of each individual group would file individual testimony." (*Id*. ¶ 7.) The implication seems to be that ATXI is unreasonable for expecting witnesses to testify on their own behalf. If there is any doubt, the Group expressly characterizes the notion that non-testifying witnesses should "stand for cross-examination" as "very ludicrous." (*Id*. ¶ 10.e.)

It seems fair to say that the Group does not think much of the requirements that a witness should present his own testimony and then stand for cross-examination. But these requirements are fundamental to the fairness of this and any other proceeding. *See, e.g.*, *Stop The Mega-Dump v. County Bd.*, 2012 IL App (2d) 110579, 979 N.E.2d 524, ¶ 27 (2012) (noting that "minimal standards of procedural due process" include "the right to cross-examine adverse witnesses").

For example, Mr. Bergschneider testifies that he is authorized to testify on behalf of the Group. (MSSCLP Ex. 1.0, p. 2:25–28.) And throughout, he jarringly testifies as "we": he testifies that "we" use several specified types of equipment and techniques (*id*. at 4–5), that "[s]ome of the farms . . . are in the negotiating stages of entering long-term contracts" and that the Project casts a "cloud . . . over our farms" (*id*.), and that "we all agree completely with, and

support" numerous items of direct testimony (*id*. at 9–10). But how do we know that all this is in fact the case, with just Mr. Bergschneider's testimony? Indeed, as if to the highlight the problem, the Group concludes this section of its argument by asking rhetorically, "Does ATXI seriously question the veracity of [Mr. Bergschneider's] statement" that "any member of the group would attest to [his] Direct Testimony"? (MSSCLPG Response ¶ 10.f.) In fact, ATXI does have "serious questions" for these Group members, questions that, unless the individual testifies on his or her own behalf, ATXI has no way of asking. And if it cannot ask its questions, it cannot confirm what the witness actually believes or resolve the myriad other questions and issues raised when a person puts evidence into the record.

If ATXI's motion is denied, it will be required to simply take Mr. Bergschneider's word for all the other members of his group. That may be acceptable to the Group; it is not acceptable under the law.

B. The Group simply misstates ATXI's standing argument.

The Group also suggests that ATXI argued that certain members of the Group "do[] not have standing." (*Id*. ¶ 11.) That is not what ATXI argued. ATXI's argument is that Mr. Bergschneider lacks standing to represent others' interests, not that the individual members of the Group lacked standing to participate in the case. Because the Group mischaracterizes ATXI's argument regarding standing, it offers no meaningful response to it.

C. The Group offers no substantial response to issues concerning the unauthorized practice of law.

ATXI also argued that even if the members of the Group consented to having Mr. Bergschneider present their views in this case, he cannot do so without engaging in the unauthorized practice of law. The Group's response to this is simply to state that requiring each

member "of the group to parrot the testimony of Mr. Bergschneider would . . . simply result in unduly repetitious testimony." (*Id*. ¶ 12.)

This is non-responsive. It is nonresponsive because it does not engage the problem identified in ATXI's argument. Whether it is "repetitious" for witnesses to testify on their own behalf is irrelevant to the question of whether Mr. Bergschneider is authorized to speak for them at hearing.

It also would seem incorrect to characterize their testimony as unduly repetitious. Assuming that the members of the Group have distinct personal interests in different properties, their testimony would *not* be repetitious, but would involve each witness presenting their own unique interest and perspective. And of course, each witness would also be subject to cross-examination. And if the Group *is* correct—if there is no point to presenting these witnesses' individual testimony—then it need not present their testimony.

The point is this: if the Group wants to get a member's views into the record, the member must testify. ATXI is not trying to make many speak for one. It is the Group who is trying to avoid each one speaking for himself.

D. The motion to strike is not premature.

The Group also asserts that "the instant Motion is premature" because "ATXI has the right to call Mr. Bergschneider to testify on oath on cross-examination." (*Id*. ¶ 4.) This is incorrect. As ATXI explained above with respect to a similar argument by the Ragheb family, the motion is timely. *See, e.g.*, *Cent. Ill. Pub. Serv. Co. v. Gibbel*, 65 Ill.App.3d 890, 893 (1978) ("A motion to strike evidence is timely when the character of the objectionable testimony is apparent or as soon as it becomes apparent").

E. The request for an additional opportunity to file direct testimony is improper and should be rejected.

The Group also requests that its members be permitted an opportunity to file their own direct testimony. (*Id*. ¶ 13–14.)

The Group is not appearing *pro se*, but is represented by counsel. It first intervened in this case on December 21, 2012, so it had approximately three months to prepare direct testimony. And an attorney cannot justifiably feel ambushed by the rule that a witness must testify on his own behalf and not speak for others—that is one of the most basic evidentiary principles that there is. It is not clear to ATXI why the Group chose to present its case in such an odd way, with one witness expressly speaking for many other people, given the amount of time that it had to prepare and given the fundamental norms that its approach violated.

But choose it did. Permitting it another opportunity to present direct testimony would only delay these proceedings and potentially deprive ATXI of a full and fair opportunity to investigate and test the Group's case. The proper outcome here is that the motion to strike should be granted, and Mr. Bergschneider should testify on his own behalf and no other.

If the Commission does allow an additional opportunity to present testimony, however, it must also ensure that ATXI receives the same opportunity to review and rebut the new direct that it would have had were the testimony timely filed. Otherwise, the Group's failure to abide by the case management schedule and its decision to ignore basic legal norms will unfairly accrue to its benefit.

V. REPLY TO LEON CORZINE

Leon Corzine does not respond to the arguments in ATXI's motion to strike. He doubles down.

In its motion, ATXI pointed out that Mr. Corzine had purported to represent the views and interests of three other parties: (*1*) other farmers and landowners, (*2*) a seed company, and (*3*) a banker. Rather than offer any argument in favor of admitting this testimony, Mr. Corzine simply underlines it.

Regarding the "other farmers and landowners," he reiterates that they are "going to [be] negatively affected." (Corzine Response at 1.)

Regarding the seed company, he avers that "Lynn Criswell, Monsanto Operations Supervisor at the Dekalb, Illiopolis seed facility, is prepared and willing to testify" to a certain, quoted position. (*Id*.)

Regarding the banker, he states that bankers "will of course have an issue with [the Project]." (Corzine Response 1–2.)

Mr. Corzine's response to the objection, then, is to reiterate the challenged testimony more emphatically. As Mr. Corzine has not offered any arguments in favor of admitting the challenged testimony, but instead restated it, there is little to which ATXI may offer reply. ATXI reiterates its motion to strike.

VI. REPLY TO MICHAEL LOCKWOOD

Michael Lockwood served his response to ATXI's Motion to Strike on 8:43 p.m., Sunday, April 21, two days later than the April 19 deadline. (*See* Notice of ALJs' Ruling (Apr. 17, 2013).)

Even if the ALJs do consider Mr. Lockwood's untimely response, it lacks merit. His only response is to assert that his testimony representing the interests of future landowners and neighbors involves "simple statement[s] of fact." (Lockwood Response at 1.) But those attempting to represent the interests of another could always assert that they are "stating facts"—

and that would simply ignore the limitations that the law places on who may properly represent certain rights and interests.

Indeed, he concedes that he does not even know whether "the neighbor cares or does not care about the lines" (*id*.), but he does not recognize that this is one of the reasons for standing limitations. His neighbor, whose interests he does not understand, may be favorably inclined or indifferent towards the Project or have reasons not to become involved in the case. The point is that they are his neighbor's interests, not Mr. Lockwood's, and whether to assert those interests is his neighbor's, not Mr. Lockwood's, choice to make.

VII. REPLY TO STOP THE POWER LINES

ATXI also moved to strike the testimony of Margaret Sue Snedeker, Perry Baird, and Bruce Daily. Stop the Power Lines Coalition and the Coles and Moultrie County Land Interests (collectively, "the Coalition") raised a number of arguments in response.

A. Mr. Daily is not entitled to testify on behalf of others.

The Coalition concedes that "Mr. Daily testified that he was submitting testimony on behalf of himself *and the seven other members* of CMCLI." (Coal. Response at 2 (emphasis added).) The Coalition argues that the motion "should be categorically rejected" because even though "he was testifying on behalf of the CMCLI, he specifically identified himself as a member of the group." (*Id*. at 3.)

The Coalition does not appear to recognize the problem with its approach. Witnesses must testify on their own behalf—that is why hearsay is generally inadmissible. Like some of the other parties, the Coalition apparently sees no problem with one witness speaking for many, as long as they are part of the same group. But this simply ignores the fact that the non-testifying group members will never speak for themselves and will never be subject to discovery or cross-examination. Again, the requirement to present one's own testimony and then stand for cross-

examination is fundamental to the fairness of this proceeding. *See, e.g.*, *Stop The Mega-Dump v. County Bd.*, 2012 IL App (2d) 110579, 979 N.E.2d 524, ¶ 27 (2012).

ATXI has no problem with Mr. Daily testifying on his own behalf, but he cannot be allowed to testify on behalf of others.

B. ATXI did not argue that Mr. Baird's or Ms. Snedeker's testimony contained hearsay.

The Coalition also argues that Mr. Daily's, Ms. Snedeker's, and Mr. Baird's testimony "contain no hearsay." (Coal. Response at 4.)

ATXI does not assert that the latter two witnesses presented hearsay. On pages 11 and 12 of its motion to strike, ATXI listed two categories of witnesses, the second containing those who purported "to testify on behalf of others." (Capitalization omitted.) Ms. Snedeker and Mr. Baird were not listed in the second category, meaning that ATXI did not argue that they presented hearsay.

Mr. Daily, on the other hand, did offer hearsay. In the Coalition's own words, he "testified that he was submitting testimony on behalf of himself and the seven other members of CMCLI." (Coal. Response at 2.) The Coalition asserts that Mr. Daily does "not repeat any out of court statements" (*id*. at 4), but that is not true—every word he says is spoken *for eight*, of whom seven will never take the stand and make their statements *in* court. That is classic hearsay (albeit unusually overt and complete).

C. ATXI has not challenged the standing of the Coalition's witnesses to participate in the case, only to represent the interests of others.

In its motion, ATXI argued that witnesses lack standing to represent the interests of other persons or their property. In response, the Coalition argues that because its witnesses have standing to represent their own interests, they may therefore represent the interests of anyone impacted by the Project. This is far too broad.

The Coalition asserts that "[t]he purpose of a standing requirement is to assure sufficient sharpness in defining issues so that the court may be aided in deciding a case." (Coal. Response at 7.) ATXI agrees that this is *one* purpose of the standing doctrine. But it is not the only one. Another purpose is to protect the non-parties whose interests will otherwise be commandeered. One reason that courts generally will not permit the assertion of "the rights of third persons not parties to the litigation" is because "it may be that in fact the holders of those rights . . . do not wish to assert them." *Singleton v. Wulff*, 428 U.S. 106, 113–14 (1976). This Commission has recognized the same point: a complainant should not be permitted to press the claims of a third party, who "may have sound business reasons for not lodging a complaint against another and, therefore, should not be involuntarily entangled in litigation by an unaffiliated party." *Citizens Utility Board v. Ill. Bell Tel. Co.*, Docket 00-0043, 2001 Ill. PUC LEXIS 124, at *17 & fn. 4 (2001). That is why a "party has standing to challenge the constitutionality of a statute *only insofar* as it adversely impacts his or her own rights." *People v. Funches*, 212 Ill.2d 334, 346 (2004) (emphasis added).

In fact, just last year the Supreme Court of Illinois issued a decision considering and rejecting a position identical to the Coalition's. *See Powell v. Dean Foods Co.*, 2012 IL 111714, 965 N.E.2d 404. In *Powell*, the appellants sought to challenge an order denying *another party's* motion. Making the very same argument as the Coalition, the appellants argued that they were "each a party to the action," "that they each have a personal stake and a direct, immediate and substantial interest in the outcome," and that they were "prejudiced by the . . . erroneous [denial of the motion]." *Id*. ¶ 38. Therefore, they contended that they had "standing to challenge the trial court's order denying [the third party's] motion." *Id*.

The *Powell* Court reiterated the rule that "[a] party must assert its own legal rights and interests, rather than assert a claim for relief based upon the rights of third parties." *Id*. ¶ 36. The Court considered the claims at issue and held that "[i]t is clear that [the appellants] are asserting a claim for relief based upon the rights of [the third party], rather than asserting their own claims." *Id*. ¶ 42. That being the case, they did "not have standing to challenge the trial court's order denying [the third party's] motion." *Id*.

While *Powell* involved considerably different facts, it highlights the principle applicable here. Standing to participate in a case (what the Coalition has) is not the same thing as standing to raise any and all interests potentially impacted by a case (what the Coalition wants). To wit: had Perry Baird entered this case solely attempting to represent the interests of the United States of America as impacted by the Project, it would have been absurd. But how does that change because he is co-trustee of the Thelma Worick Revocable Trust? It does not. While his co-trustee status might entitle to him to intervene in this case, it does not entitle him to represent the interests or assert the rights of anyone else impacted by the Project, including the United States of America.

The Coalition's witnesses can undoubtedly get in the door. But that does not give them the run of the place. Standing is not either zero or infinity; it only goes as far as the party's "own legal rights and interests," not to "the rights of third parties." *Powell*, 2012 IL 111714, ¶ 36. The testimony of Mr. Daily, Mr. Baird, and Ms. Snedeker must be struck to the extent they seek to represent the interests of other persons and their property rights.

D. The Coalition has not dispelled the issues regarding the unauthorized practice of law.

The Coalition concludes by asserting that its witnesses are not engaged in the unauthorized practice of law. (Coal. Resp. at 9.) It raises only two points in support.

1. There is no Commission practice permitting persons to routinely testify on behalf of third parties.

The Coalition first states, "The practical reality is that many utility witnesses testify in Commission proceedings that they are testifying on behalf of the utility, but that does not render their testimony inadmissible or subject them to accusations of unauthorized practice of law." (*Id*.) This is not a sound analogy.

Utilities, like other corporations, cannot speak for themselves but must speak through authorized representatives and employees. *Carterville Coal Co. v. Covey-Durham Coal Co.*, 186 Ill.App. 163, 180 (1914) ("A corporation must act and speak through its officers and agents; and we think that the court below erred in rejecting the testimony concerning alleged statements of the plaintiff's president and business manager . . . ."); *Alpha School Bus Co. v. Wagner*, 391 Ill.App.3d 722, 737 (2009) ("Corporations can only act through their agents"). In other words, when an agent of the utility speaks, it is the utility speaking. There is no third-party problem.

Natural persons, in contrast, can speak for themselves, and in the hearing room they must. To make the Coalition's analogy work, it would have to cite a routine practice in which, for example, Commonwealth Edison Co. witnesses routinely took the stand to testify on behalf of Ameren Illinois Co. That, of course, is not the Commission's practice. What the Coalition is trying to do is not business as usual.

2. The unauthorized practice of law includes presenting written documents setting forth the views of another.

Second, the Coalition argues that the fact that these witnesses "stated that their testimony was on behalf of the group does not equate to the unauthorized practice of law." (Coal. Response at 10.)

ATXI would note first that this argument is not responsive to the problems posed by Ms. Snedeker and Mr. Baird's attempt to represent the numerous third parties who are *not* members

of the Coalition. And even with respect to group members, as ATXI explained in detail in its motion to strike, "[a]ctivities performed by an individual considered to be the 'practice of law' include . . . appearing in court or before tribunals representing one of the parties . . . and preparing evidence, documents and pleadings to be presented." *Grafner v. Dept. of Employment Secretary*, 393 Ill.App.3d 791, 798 (2009).

Frankly, it might be that there is no reason for the numerous non-testifying members of the Coalition (and other groups) to actually present testimony. That is not for ATXI to decide, of course, but for the parties. The point is that *if* the Coalition and others want these persons' views in the record, *those persons must testify*. They cannot piggyback in on someone else.

VIII. CONCLUSION

For the reasons set forth above and in its Motion to Strike, and as modified by the withdrawals above, ATXI respectfully requests that the Commission grant its Motion to Strike.

Dated: April 22, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Albert Sturtevant, an attorney, certify that on April 22, 2013, I caused a copy of the foregoing *Consolidated Reply to Responses to ATXI's Motion to Strike Portions of Certain Intervenors' Direct Testimony* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert D. Sturtevant
Attorney for Ameren Transmission Company of Illinois